

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Spl. Cr. A.T. Acquittal Appeal No.184 OF 2021

Appellant/State

Through Mr. Muhammad Iqbal
Awan, Addl. Prosecutor General
Sindh.

Respondents

1) Ali Akbar (2) Jameela (3)
Mohammad Rehan (4) Riaz
Begum.

Date of Announcement.

31.03.2023

JUDGMENT

Mohammad Karim Khan Agha, J:- Respondents Ali Akbar son of Jehangir, Mst. Jamila @ Soha D/o. Jehangir, Muhammad Rehan son of Abdullah Shah and Mst. Riaz Begum w/o. Abdullah Shah were sent up to face their trial before Anti-Terrorism Court No.V, Karachi in Special Case Nos.468 & 468-A of 2019 under Crime No.12/2019 u/s.365-A/34 PPC r/w Section 7 ATA 1997 and Crime No.18 of 2019 u/s. 23(1)A of S.A.A. lodged at PS Saeedabad, Karachi and vide judgment dated 17.09.2021 all the respondents were acquitted by extending the benefit of doubt. It is to be noted that respondent Jehangir has since expired. The State has therefore filed this appeal against 04 acquitted respondents.

2. The brief facts of the prosecution case are that on 12.01.2019 at 1910 hours, the Complainant Muhammad Ishtiaq son of Muhammad Yaqoob reported that some time ago, his daughter Mst. Hina solemnized Court marriage with Ali Akbar and after some time due to disputes, she came back to the complainant's but Ali Akbar took her back forcibly and after that he has no knowledge of where his daughter is. Ali Akbar threatened and claimed that his wife is with complainant while the complainant told him that neither she is with him nor he has any knowledge of her whereabouts. Ali Akbar extended threats to him for dire consequences. Complainant's son namely Daniyal aged 15 years who is student of Class-VII went to his Crescent Public School situated at 4/C but did not return

home. On inquiry it came to his knowledge that his son had left at 1230 hrs. The complainant tried to his level best but did not find any clue about the whereabouts of his son. He reported the matter to the police. He is of the firm belief that his son Daniyal has been kidnapped by his son in law Ali Akbar to pressurize him and his family. Subsequently, on account of recovery of one 30 bore pistol with number 8590 alongwith load magazine with 03 live rounds on pointation of the accused Ali Akbar at Main Gate of Khursheed Pura Graveyard, he was also arrested under section 23(1)-A of S.A.A.

3. After registration of FIR No.12/2019 U/s. 365 PPC registered at P.S. Saeedabad, Karachi initially the investigation of the crime was entrusted to SIP Gulfraz Khan of P.S. Saeedabad Karachi. On 12.01.2019, he prepared memo of place of incident on pointation of Complainant. He also recorded the statements of witnesses U/s. 161 Cr. P.C. Thereafter, the investigation was transferred to Inspector Muhammad Shahjehan Lashari of P.S. AVCC/CIA, Karachi who inspected the place of incident, prepared memo of place of incident, recorded statements of witnesses, and obtained CDR reports, thereafter on 24.05.2019 the investigation of Crime No.18/2019 U/s. 23(1)-A S.A.A. against accused Ali Akbar was also entrusted to him, then he inspected the place of incident and prepared its memo, thereafter on 29.05.2019, he wrote a letter to Incharge FSL for inspection of recovered weapon on the pointation of accused Ali Akbar, he also wrote a letter for obtaining CRO of accused persons and after completing all requisite formalities, he has filed Charge Sheet against all the accused persons for the offences U/s 365-A/34 PPC r/w section 7 of ATA, 1997 and also a separate charge sheet U/s. 23(1)-A of S.A.A against accused Ali Akbar before the Administrative Judge ATCs High Court of Sindh at Karachi. The appellants all plead not guilty and claimed trial.

4. The prosecution in order to prove its case examined 13 Prosecution Witnesses and exhibited various documents and other items. The statements of respondents were recorded under Section 342 Cr.P.C in which they denied the allegations levelled against them. Respondents did not examine themselves on oath nor produced any DW in their defence.

5. After hearing the parties and appreciating the evidence on record, the trial court acquitted the respondents hence, the State/appellant has filed this appeal against their acquittal.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 17.09.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. The reasons for the acquittal of the respondents as per the reasoning in the impugned judgment are set in paragraphs Nos.46 to 52 in the judgment. Paragraphs Nos.51 to 55 are reproduced hereunder:-

"51. As far as the offence under section 365-A P.P.C is concerned, in view of above, it is admitted at all hands that there is no evidence led by the prosecution to show that the accused Ali Akbar along with co accused were involved in the act of abduction even that there is nothing had been brought on record establishing that they had demanded ransom for release of the alleged abductee, Some evidence brought on record regarding making phone calls but now it is well settled that mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. Reliance is made on a recent case of "Mian Khalid Perviz.Vs State that has been reported in (2021 SCMR 522), the Honorable Supreme Court of Pakistan held that:

7. "Mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. Besides the call transcripts, it should also be established on the record that callers on both the ends were the same persons whose calls data is being used in evidence. While considering such type of evidence extra care is required to be taken by the Courts as advancement of science and technology, on the other hand, has also made it very convenient and easy to edit and make changes of one's choice as highlighted and discussed in the case of Ishtiaq Ahmad Mirza supra."

52. So far the investigation of this case is concerned, from the deposition of PW-13/ entire investigation has been written by one HC Aslam which fact as he admitted in cross examination that "It is correct to suggest that I did not make any sketch of place of incident nor recorded the statement of anyone. It is correct to suggest that memo of production of abductee at Ex.7/D was prepared on 20.05.2019 around 1500 hours and the same was written by my Munshi namely HC Aslam. It is correct to suggest that School Authority as to whether on the day of incident the Abductee was attended his School or not. It is correct to suggest that except

Complainant Hina and Abductee I had not recorded statement of any private person in this case. It is correct to suggest that I had not applied for recording of statement of Abductee U/s. 164 Cr. P.C. in this case crime. It is correct to suggest that the numbers visible on the pistol as well as made number written thereon are also not mentioned on the sketch of pistol. Likewise, it is almost the same position in pistol recovery. There, Sub-Inspector Muhammad Omar stated that "It is correct to suggest that the hand writing of Ex.20/C and 20/F are same and it was written by one Munshi PC Aslam. It is correct to suggest that name of PC Aslam is not mentioned in any entry, which I have produced before the Court. It is correct to suggest that I have not disclosed in my examination in chief today that all the documents specifically Ex.20/C and 20/F were prepared by the PC Aslam. It is correct that all papers work of PS AVCC was prepared by said PC mostly including statements of PWs before the officers. It is correct to suggest that he has written the documents at PS AVCC but when his presence is required he accompanied by the orders of high-ups."

53. The evidence produced by the prosecution is full of contradictions and improvements neither has found confidence inspiring nor corroborating so, the evidence brought on record cannot be safely relied upon for conviction of accused persons. No incriminating material is available on the file to connect accused persons except the bare allegation in the FIR. Neither alleged abductee has been recovered from the custody of accused nor is the ransom amount established to have been demanded by the accused. No eye-witness of the alleged kidnapping, except abductee Daniyal whose testimony required independent corroboration which is lacking in this case. The element of terror or panic is also missing in the case. Hence, the accused persons cannot be convicted for the offence under section 7 of Anti-Terrorism Act, 1997. The persons who held the Jirga neither were examined by the police nor appeared before court. Mere assertion of the complainant that accused has a hand in the affairs without positive attempt on his part to substantiate the same, is of no consequence. Deposition of the child witness/alleged abductee, is self-contradictory and is hard to believe.

54. From the close scrutiny of the evidence, there are several circumstances in this case which have created doubt in the prosecution case. Reliance is made on a recent case of "Naveed Asghar and 2 others v. The State" reported in (PLD 2021 SC 600), in which, the Honorable Apex Court reiterated the principle of benefit of doubt and observed:

(h) Criminal trial-----Benefit of doubt---Scope---Benefit of doubt automatically went in favour of an accused---Even if a single circumstance created reasonable doubt in a prudent mind regarding guilt of an accused then the accused shall be entitled to such benefit not as a matter of grace and concession but as a matter of right and such

benefit must be extended to the accused person(s) by the Courts without any reservation---Even in high-profile cases the benefit of doubt could not be extended to the prosecution and such benefit could only be extended to the accused who was facing the trial.

55. On the touchstone of the above principles and law and in the light of the aforementioned discussion, I am not persuaded to the arguments advanced by the learned APG for the State assisted by the learned Counsel for the complainant."

8. When confronted by this court as to what were the legal infirmity in the impugned judgment learned counsel for the State submitted that the Court had erred in not relying of the evidence of the abductee who fully implicated all the accused/respondents in commission of the offences charged. However, he has not been able to point out any other evidence on record which implicated the respondents in commission of the offences.

9. As a matter of law it is well settled that in an appeal against conviction the appellant acquires double presumption of innocence and that this Court is reluctant to interfere in the trial Court judgment unless it is whimsical, arbitrary and based on a complete non-reading and misreading of the evidence.

10. Keeping this legal principle in our mind, we have gone through the evidence on record and found that the trial Court for the reasons mentioned above in the impugned judgment has rightly not relied upon evidence of the abductee who despite being recovered did not even record his statement despite a lapse of 20 days and there is possibility when he gave such statement under the directions of his father. Furthermore, there is no other supportive and corroborative evidence of any worth to connect the respondents with the commission of offences so charged.

11. This being the case, we do not find any legal infirmity in the impugned judgment and as such this appeal against acquittal is hereby dismissed.